

AIM[®]

Association des Industries de Marque
European Brands Association
Europäischer Markenverband

BUSINESSEUROPEECTA

European Communities Trade Mark Association



International
Trademark
Association



Brussels, 4 May 2010

Future Revision of the Trade Mark System in the European Union

Trade Mark Users Associations ask Competitiveness Council not to jump to conclusions

AIM, BUSINESSEUROPE, ECTA, INTA and MARQUES, the largest and most representative user organisations in Europe, have long anticipated the overall examination of the Community Trade Mark (CTM) and national trade mark systems and consider this review as a unique opportunity to fine-tune the European Trade Mark Systems to benefit users, to promote further harmonisation of the Internal Market and to increase European competitiveness.

Further to the Council Conclusions of May 2007 and taking into account the results of the Joint Meeting of the Administrative Board and Budget Committee of OHIM of September 2008, we hope that the review will lead to proposals in the following areas:

- Further harmonisation of legal bases, procedures, practices and services in the CTM and national systems and the establishment of benchmark performance standards for all trade mark offices;
- Assessment of the cooperation between OHIM and national offices with a view to strengthening the services offered by all offices to users;
- Institution of a formal biannual review of the finances of OHIM including a balanced approach for fees by the European Commission and a review of the fee-setting process in order to avoid any possible conflict of interests;
- Determination of the use of the remaining OHIM surplus exclusively in the interest of the users;
- Reduction of the renewal fees to benefit existing businesses, particularly SMEs.

We have welcomed the study awarded to the Max Planck Institute in Munich in November 2009 as a critical and unique opportunity for the European Institutions, trade mark offices, and users to assess the current interrelationships and alignment of the CTM and national trade mark systems, the OHIM and national offices, and engage in an in-depth review of the legal environment and developments impacting trade marks since the introduction of the CTM in 1996.

The complexity of the issues at stake, however, requires that sufficient time be given to consider thoroughly all the questions raised in the course of the study. We therefore would like to express our deep concern at the timing of the Conclusions proposed by the Spanish Presidency of the EU which are expected to be adopted by the Competitiveness Council at the end of May.

We believe that these Conclusions should not preempt the recommendations of the MPI study nor prematurely restrict the scope for the debate that will ensue among all stakeholders once the MPI recommendations are available. In particular, we are concerned about the following:

- ***Establishment of an explicit competence for the role and mission of OHIM to cover the field of enforcement and a possible role in anti-counterfeiting for national trade mark offices.***

Such a role would be a significant departure from the current activities of trade mark offices bearing in mind efforts already being undertaken by other institutions and law enforcement agencies. It would require a fundamental change of their mission. A thorough analysis must be carried out before any conclusions can be reached with the MPI study being a first step.

- ***Creation of a legal basis for distributing to the National Offices of Member States an amount equivalent to 50% of the renewal fees:***

We continue opposing the principle of diverting to national offices CTM user-generated fees. We are adamant in our belief that OHIM and the national offices should be self-financing through user fees and that those fees should be used only for the offices for which the fees are paid. We are aware that some national offices do not have financial autonomy and do not have control over their finances and our greatest concern is that the distributed funds could find their way into state budgets and end up covering expenditures unrelated to projects which would benefit the European trade mark system. In addition, we believe that the diversion of OHIM renewal fees, which are currently too high, would amount to a permanent subsidy that will make it difficult for national offices to remain responsive to market requirements and users' needs. Finally, any such diversion to national offices would put them in a position to vote on the level of fees in which they have a direct interest. Beneficiaries should never be put in such a position.

The Commission tender has called for further investigation and recommendations on these two points and we urge the Council not to preempt the MPI findings and jump to conclusions at this early stage of the process.

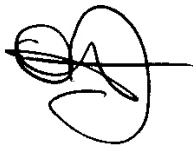
We thank you for your attention to these matters and remain at your disposal should you have any further questions.



Dawn Franklin, Chairman AIM Trade Mark Committee



Jérôme Chauvin, Director of the Legal Affairs Department - BUSINESSEUROPE



Annick Mottet Haugaard, First Vice President - ECTA



Christina Sleszynska, Europe Representative - INTA



Tove Graulund, MARQUES Observer to the OHIM Administrative Board and Budget Committee

Who we are

AIM - European Brands Association

AIM is the European Brands Association. It represents the branded goods industries in Europe on key issues which affect the ability of brand manufacturers to design, distribute and market their brands. AIM's membership groups 1800 companies of all sizes through corporate members and national associations in 22 countries. These companies are mostly active in every day consumer goods. They employ some two million workers and account for over 350 billion Euro in annual sales in Europe alone. AIM's mission is to create for brands an environment of fair and vigorous competition, fostering innovation and guaranteeing maximum value to consumers now and for generations to come. See www.aim.be for further information.

BUSINESSEUROPE

BUSINESSEUROPE plays a crucial role in Europe as the main horizontal business organisation at EU level. Through its 40 member federations, BUSINESSEUROPE represents 20 million companies from 34 countries. Its main task is to ensure that companies' interests are represented and defended vis-à-vis the European institutions with the principal aim of preserving and strengthening corporate competitiveness. BUSINESSEUROPE is active in the European social dialogue to promote the smooth functioning of labour markets. Please consult www.businessseurope.eu for further information.

ECTA - European Communities Trade Mark Association

ECTA, which stands for European Communities Trade Mark Association, was formed in 1980. ECTA numbers approximately 1.500 members, basically coming from the Member States of the European Union with associate members from all over the world. It brings together all those persons practising professionally in the Member States of the European Community in the field of trade marks, designs and related IP matters. These professionals are lawyers, trade mark advisors, trade mark attorneys, in-house counsel and others who can be considered specialist practitioners in these areas. With this membership, ECTA takes care of the needs of large, middle and small sized companies. ECTA's secretariat is in Brussels. Please consult www.ecta.eu for more information

INTA - International Trademark Association

Created in 1878, INTA is a membership association of more than 5,600 trademark owners and professionals, from more than 190 countries including all 27 EU Member States. INTA is dedicated to the support and advancement of trade marks and related intellectual property as elements of fair and effective national and international commerce. The Association is headquartered in New York and has representative offices in Brussels and Shanghai. You can find more information about our activities at www.inta.org.

MARQUES

MARQUES, the European Association of Trade Mark Owners, represents over 750 trade mark owners and trade mark and design law professionals. **MARQUES**, which was founded in 1987, represents trade mark owners' interests before the relevant European Union and other international bodies in all relevant areas. It also organises networking and educational events and promotes communication between brand owners in Europe. The goal of the Association is to assist brand owners in the management, protection and exploitation of their trade marks, designs and other IP rights, and to provide an effective platform for the representation of their interests.